

# The right to remain silent in criminal proceedings

## The nature of the right to silence

In criminal proceedings the general rule is that every man is innocent until proven guilty. Therefore, it is for the prosecution to prove that he has committed a crime by establishing beyond reasonable doubt every element of the offence.

The accused does not have to prove anything and that would provide that he does not need to say anything or establish anything in his defence. This is further embodied in a widely known fundamental human right to remain silent.

However more recently, Parliament has created a number of rules which allow a failure of the accused to answer questions to be adduced as evidence of showing his guilt. These circumstances include the accused remaining silent on being questioned by the police, or not accounting for a certain object in his possession, or for his presence at a particular place.

Further situation which raises an opportunity to use silence against the accused is if he chooses not to testify at trial.

## Failure to testify

The traditional right of an accused not to testify has been modified by section 35 of the Criminal Justice and Public Order Act 1994. The provision allows the court and the jury to draw such inferences as appear proper from the failure of the accused to give evidence or from his refusal, without good cause, to answer any question.

## When can inferences be drawn?

The law establishes that adverse inferences can only be drawn if the accused has either been warned by the court of the effect of the failure to give evidence or alternatively where he has stated that he will give evidence and then fails to do so.

These provisions apply generally to all accused who fail to answer questions in their defence unless their refusal is justified. Such justification could be established only if it falls under one of three specified situations:

1. On grounds of privilege;

2. Because another statute excludes the evidence that would be contained in the answer; or
3. Because the court rules that the question need not be answered.

### The inferences that can be drawn

Inference can be drawn by a person's silence in court only in respect of his guilt. Therefore, it could be used to effectively boost up the prosecution's case.

However, such inferences cannot be drawn in respect of a case to answer against the accused. This is because applications for no case to answer are normally made at the conclusion of the prosecution evidence. Therefore, those are considered some time before the accused has had any opportunity to present his case and give live evidence in court.

Further, section 35 of the CJPOA 1994 requires the magistrates in a summary trial to take into account the failure of the accused to testify. If the case is before a jury, the provision allows the judge to direct the jury to consider the failure of the accused to testify in cases when he has not given evidence and has been warned of the consequences.

In addition, the prosecution is entitled to comment upon the failure of the accused to testify.

### The direction to the jury

The elements of a direction to the [jury](#) in case of failure to testify have been established by case law. Those are now embodied in Judicial Studies Board, Specimen Direction 39. The direction given should contain guidance to the following elements:

- That the accused has a right not to give evidence but he has been warned that a failure to do so may lead to the jury drawing inferences.
- A failure to give [evidence](#) cannot on its own prove guilt but it can assist in deciding whether the accused is guilty.
- If a reason for not testifying has been put forward by the accused, the jury should consider it and if accepted not draw any inferences. However, if rejected, they may draw an inference but are not obliged to do so.
- If the jury concludes that the only sensible explanation for the decision not to testify is that he has no answer or no answer that would stand up to cross-examination, then it would be open to the jury to hold against him his failure to give evidence. It is for the jury to decide whether it is fair to do so.

It is therefore clear that a jury cannot lawfully convict solely on the basis of the accused's silence at trial. Nevertheless, such could be used to support the evidence of the prosecution against him and in that way lead to a [conviction](#).

References:

In Brief [online] [dostęp 15.03.2019] dostępne w Internecie:  
<http://www.inbrief.co.uk/court-proceedings/right-to-remain-silent-in-criminal-proceedings/>  
<http://legal-dictionary.thefreedictionary.com>

Exercises

*I. Match the definitions with the terms:*

1 the right to silence	A to make negative conclusions
2 proven guilty	B to push upward the Prosecutor's side
3 adduced as evidence	C no need to say anything
4 failure to testify	D one has not given evidence
5 to draw adverse inferences	E the instructions to the jurors
6 on grounds of privilege	F found to have committed a crime
7 to boost up the case	G to confront questioning of the opposing party
8 to give live evidence	H to testify personally in court
9 direction to the jury	I presented as a proof
10 to stand up to cross-examination	J the statute allows the accused not to give evidence

*II. Complete the sentences with the given words: innocent, inferences, direction, guilt, silence, reasonable, cause, testifying, failure, summary, evidence, privilege*

- The accused has given the reason for not \_\_\_\_\_.
- The jury hold against the accused his \_\_\_\_\_ to give evidence.
- Case law established the elements of a \_\_\_\_\_ to the jury.
- The accused has been warned that the jury will draw negative \_\_\_\_\_ by his silence.
- The magistrates in a \_\_\_\_\_ trial are required to consider the failure to testify.
- Inferences can be drawn by the accused silence in respect to his \_\_\_\_\_.
- In criminal proceedings the accused is \_\_\_\_\_ until he is found guilty.

8. The prosecution has to prove the accused's guilt beyond \_\_\_\_\_doubt.
9. A failure not to testify can be considered as \_\_\_\_\_ of guilt.
10. The jury can draw inferences from the accused refusal, without good \_\_\_\_\_ to testify.
11. A chance to use \_\_\_\_\_ against the accused when he fails to testify in court.
12. Sometimes the refusal to give evidence is justified, e.g. on grounds of \_\_\_\_\_.

*III. Mark the sentences true/false:*

1. The general use in criminal proceedings is that the accused is considered guilty from the start.
2. Some rules allow the accused to fail to answer questions by the police.
3. The prosecution has to prove that the accused has committed a crime.
4. The circumstance showing the accused's guilt is not accounting for his presence at a particular place.
5. The law establishes that adverse conclusions can solely be drawn if the accused has wanted to testify and then he refused to do it.
6. There are not any justifications not to give evidence or refuse to do it.
7. Motions for 'no case to answer' are made at the beginning of a trial.
8. The jury can convict only on the basis of the accused's silence at court.

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